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11 JOEY CARDIEL

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14 IN THE UNITED STATES DISTRICT COURT
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16 EASTERN DISTRICT OF CALIFORNIA

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18 UNITED STATES OF AMERICA,
19 Plaintiff,
20 v.
21 JOEY CARDIEL,
22 Defendant.

23 Case No. 1:22-CR-00041-NODJ-BAM
24 STIPULATION TO CONTINUE
25 MOTIONS HEARING;
26 ORDER

27 Date: August 19, 2024
28 Time: 9:00 a.m.
Judge: Jennifer L. Thurston

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28 **IT IS HEREBY STIPULATED** by and between the parties, through their respective
counsel, Antonio J. Pataca, Assistant United States Attorney, counsel for plaintiff, and Eric V.
Kersten, Assistant Federal Defender, counsel for defendant Joey Cardiel, that the motions
hearing scheduled for July 1, 2024 may be continued to August 19, 2024.

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28 Mr. Cardiel is charged with being felon in possession of a firearm in violation of 18
U.S.C. § 922(g)(1). He has filed a motion to dismiss the indictment under *Bruen*, and motions to
suppress statements and evidence under *Miranda* and the Fourth Amendment. The government
has filed oppositions to all three motions and time has been excluded through the motions
hearing and any ruling thereon.

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28 On May 9, 2024, a panel of the Ninth Circuit issued its decision in *United States v.*
Duarte, -- F.4th --, 2024 WL 2068016 (9th Cir. 2024). *Id.* at *24. Five days later, the government

1 filed a petition for rehearing en banc and requested that the Ninth Circuit consider and grant its
2 petition on an expedited basis, and vacate the *Duarte* panel decision so that it is no longer
3 precedential. *See Duarte*, C.A. No. 22- 50048, Dkt. 72 (9th Cir. May 14, 2024). On May 16,
4 2024, the Ninth Circuit issued an order requesting that the defendant-appellant file a response to
5 the government's rehearing petition. Given the strong grounds for seeking rehearing in *Duarte*
6 the parties agree that a continuance of the hearing on the motion to dismiss is therefore
7 warranted. Mr. Cardiel also wishes to continue all motion hearings rather than splitting them in
8 the interest of judicial economy and the government does not object. Accordingly, the parties
9 request to continue the July 1, 2024, hearing until August 19, 2024.

10 The parties also agree that the interests of justice served by granting this continuance
11 outweigh the best interests of the public and the defendant in a speedy trial, and agree the delay
12 resulting from this continuance shall be excluded under the Speedy Trial Act in the interests of
13 justice, including but not limited to, the need for the period of time set forth herein for effective
14 defense preparation, defense investigation and plea negotiations; and for the filing and ruling on
15 any motion pursuant to 18 U.S.C. §§ 3161(h)(1)(D), 3161(h)(7)(A) and 3161(h)(7)(B)(iv).

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Respectfully submitted,

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PHILLIP A. TALBERT
United States Attorney

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DATED: June 24, 2024

/s/ Antonio J. Pataca

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ANTONIO J. PATACA
CODY CHAPPLE
Assistant United States Attorney
Attorney for Plaintiff

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HEATHER E. WILLIAMS
Federal Defender

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DATED: June 24, 2024

/s/ Eric V. Kersten

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ERIC V. KERSTEN
Assistant Federal Defender
Attorney for Defendant
JOEY CARDIEL

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ORDER

2 **IT IS SO ORDERED.** The July 1, 2024 motions hearing is continued to August 19,
3 2024. All time through the motions hearing and any ruling thereon shall be excluded for effective
4 defense preparation and for the filing and ruling on any motion pursuant to 18 U.S.C. §§
5 3161(h)(1)(D), 3161(h)(7)(A) and 3161(h)(7)(B)(iv). The Court finds that the ends of justice
6 served by taking such action outweigh the best interest of the public and the defendant in a
7 speedy trial.

IT IS SO ORDERED.

Dated: June 26, 2024

Jennifer L. Thurston
UNITED STATES DISTRICT JUDGE